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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-373

Leeann Renee Forsythe
26365 Fawn Court
Pioneer, CA 95666

STATEMENT OF ISSUES

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Complainant brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 20, 2006, the Respiratory Care Board of California (Board) received an application for a respiratory care practitioner license from Leeann Renee Forsythe (Applicant/Respondent). On or about October 18, 2006, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 21, 2006. On or about December 25, 2006, Applicant requested a hearing.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500)."

7. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes

1 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

2 8. Section 492 of the Code states:

3 "Notwithstanding any other provision of law, successful completion of any
4 diversion program under the Penal Code, or successful completion of an alcohol
5 and drug problem assessment program under Article 5 (commencing with section
6 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
7 agency established under Division 2 ([Healing Arts] commencing with Section
8 500) of this code, or any initiative act referred to in that division, from taking
9 disciplinary action against a licensee or from denying a license for professional
10 misconduct, notwithstanding that evidence of that misconduct may be recorded in a
11 record pertaining to an arrest."

12 9. Section 3750.5 of the Code states:

13 "In addition to any other grounds specified in this chapter, the board may
14 deny, suspend, or revoke the license of any applicant or license holder who has done any
15 of the following:

16 "(a) Obtained or possessed in violation of law, or except as directed by a
17 licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or
18 furnished or administered to another, any controlled substances as defined in Division 10
19 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
20 as defined in Article 2 (commencing with section 4015) of Chapter 9."

21 "(d) Been convicted of a criminal offense involving the consumption or
22 self-administration of any of the substances described in subdivisions (a) and (b), or the
23 possession of, or falsification of a record pertaining to, the substances described in
24 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

25 "(e) Been committed or confined by a court of competent jurisdiction for
26 intemperate use of or addiction to the use of any of the substances described in
27 subdivisions (a), (b), and (c) in which event the court order of commitment or confinement
28 is prima facie evidence of that commitment or confinement."

10. Section 3752 of the Code states:

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

12. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

13. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation. "

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a substantially-related crime)

1 14. Respondent 's license application is subject to denial under sections
2 3750(d) and 3752 [conviction], and 3750(g) in that she entered a plea of guilty to a
3 violation of Health & Safety Code section 11377, possession of a controlled substance, to
4 wit, methamphetamine. The circumstances are as follows:

5 A. On or about June 12, 2001, respondent was arrested for violating
6 Health & Safety Code section 11377, possession of a controlled substance, to wit,
7 methamphetamine.

8 B. On or about July 12, 2001, criminal complaint 1026293 titled
9 *People of the State of California vs. Leann Renee Forsythe* was filed in Stanislaus County
10 Superior Court. Respondent was charged with one felony count of violating Health &
11 Safety Code section 11377, possession of a controlled substance, to wit,
12 methamphetamine.

13 C. On or about August 8, 2001, respondent entered a plea of guilty to
14 one misdemeanor count of violating Health & Safety Code section 11377. Judge James
15 Barakatt accepted the plea, and judgment was deferred pursuant to Penal Code section
16 1000. Respondent was ordered to enroll in Recovery Crossroads and show proof of
17 completion.

18 D. On or about July 11, 2006, respondent submitted proof of
19 completion of a Level One Program in the State of Arizona. The case was then dismissed.

20 15. Therefore, Respondent 's license application is subject to denial
21 based on her conviction within the meaning of section 3752 to a misdemeanor count of
22 violating Health & Safety Code section 11377, possession of a controlled substance, to
23 wit, methamphetamine.

24
25 SECOND CAUSE FOR DENIAL OF APPLICATION

26 (Possession of a controlled substance; commitment or confinement for such possession)

27 16. Paragraphs 14 A- 14D stated above are incorporated herein.

28 17. Respondent 's license application is subject to denial under sections

1 3750.5(a) and 3750.5(e) in that she was in possession of a controlled substance;
2 methamphetamine, and ordered to attend a drug diversion program.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters
5 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Denying the application of Leeann Renee Forsythe for a respiratory
7 care practitioner license;

8 2. Directing Leeann Renee Forsythe to pay the Respiratory Care Board
9 of California the costs of the investigation and enforcement of this case, and if placed on
10 probation, the costs of probation monitoring;

11 3. Taking such other and further action as deemed necessary and
12 proper.

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14 DATED: February 28, 2007
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17 Original signed by Liane Zimmerman for:
18 STEPHANIE NUNEZ
19 EXECUTIVE OFFICER
20 Respiratory Care Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant
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